



# **Establishing & Maintaining a Safety Conscious Work Environment**

## **BACKGROUND**

In July 1993, the Nuclear Regulatory Commission's Executive Director for Operations directed that a team reassess the NRC's program for protecting alleged against retaliation. The team evaluated the process that was in place in 1993 and sought comments from other NRC offices, other Federal agencies, licensees, former alleged, and the public. One recommendation from the 1993 effort was the development of an agency policy which underscored the importance of licensees and their contractors achieving and maintaining a work environment which is conducive to the reporting of concerns without fear of retaliation.<sup>2</sup>

On May 14, 1996, the NRC issued a policy statement<sup>3</sup> which delineated its expectation that licensees and other employers subject to NRC authority will establish and maintain safety conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. The responsibility for maintaining such an environment, called a Safety Conscious Work Environment (SCWE), rests with each licensee, as well as with contractors, subcontractors and employees in the nuclear industry. The policy is applicable to NRC regulated activities of all NRC licensees and their contractors and subcontractors. The policy emphasizes that the identification and communication of safety concerns and the freedom of employees to raise such concerns is an integral part of ensuring the safety of nuclear operations.

In a March 26, 2003 Staff Requirements Memorandum,<sup>4</sup> the Commission directed the staff to develop further guidance, in consultation with stakeholders, that identifies best practices to encourage a SCWE. On February 19, 2004, the staff met with stakeholders to discuss an expanded outline of best practices to encourage a SCWE prepared by the staff based on the guidance contained in the 1996 Policy Statement and the experience and knowledge of the NRC staff in this area. Furthermore, comments on the outline were solicited in a February 12, 2004 Federal Register Notice. The comments that were received during the meeting and in response to the Federal Register Notice were considered in the preparation of this guide.

---

<sup>2</sup> "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," NUREG 1499, January 1994.

<sup>3</sup> "Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation." Federal Register Notice May 14, 1996, (Volume 61, Number 94).

<sup>4</sup> Staff Requirements - SECY-02-0166 - "Policy Options and Recommendations for Revising The NRC's Process for Handling Discrimination Issues, March 26, 2003."

## **INTRODUCTION**

The guidance in this document is intended to augment existing information that was communicated in the 1996 Policy Statement. The expanded elements of a SCWE summarized within this document were developed utilizing information obtained from reactive inspections of problematic licensee programs as well as reviews of successful progressive SCWE programs, and insights obtained during discussions with nuclear industry professionals, including individuals who provide training to the industry on the subject and attorneys who have represented licensees and whistleblowers in proceedings.

The NRC recognizes that some of the practices outlined in this guidance may not be practicable or appropriate for every NRC licensee or contractor depending on the existing work environment and/or the size or complexity of the licensed activities. In addition, practices not included in this guidance may be effective in establishing and maintaining a SCWE. The NRC staff continues to emphasize that licensees are responsible for establishing and maintaining a SCWE and implementation of the following guidance may not improve a SCWE without additional efforts by site management. However, the NRC does believe that the elements in this guidance could be helpful to NRC licensees and their contractors when developing or enhancing existing SCWE programs, or when attempting to identify and correct potential problems within a program.

## **ELEMENTS OF A SAFETY CONSCIOUS WORK ENVIRONMENT**

### **Effective Processes for Problem Identification and Resolution**

Effective processes for problem identification and resolution are essential to ensuring the safe use of nuclear materials and operation of facilities. Attributes of the work environment that encourage individuals to look for and articulate safety concerns and effectively and efficiently address and resolve the concerns raised, are discussed in the following guidance.

#### **A. Employees are Encouraged to Raise Safety Concerns**

##### **SCWE Policy**

A SCWE Policy statement which: (a) is applicable to employees and contractors; (b) asserts that it is everyone's responsibility to promptly raise concerns; and (c) retaliation for doing so will not be tolerated, helps establish a SCWE and communicate senior management's expectations for maintaining it. In addition, the policy may include:

- ! A statement that, to the extent appropriate, employees are allowed and encouraged to use work hours to report concerns;
- ! Sanctions for retaliation by supervisors, managers, or peers
- ! Expectations for management behavior that fosters employee confidence in raising concerns;
- ! Information on the various avenues available for raising concerns; and
- ! The rights of employees to raise concerns externally

### **SCWE Training**

SCWE training for managers, supervisors, and employees helps reinforce the principals outlined in the licensee's SCWE Policy. The scope of the training given to managers and employees should include applicable laws, regulations and policies underlying SCWE expectations including an understanding of:

- ! What, besides raising safety concerns, constitutes a "protected activity."

The term "protected activity" has been broadly interpreted by the Department of Labor and the US Courts. Protected activity is defined by NRC regulation as including, but not limited to:

- " Providing the Commission or employer information about alleged or possible violations of the Atomic Energy Act, the Energy Reorganization Act or requirements imposed under either statute;
- " Refusing to engage in any practice made unlawful under either statute or the requirements, if the employee has identified the alleged illegality to the employer;
- " Requesting the Commission to institute action against the employer for the administration or enforcement of these requirements;
- " Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding an provision of either statute;
- " Assisting or participating in, or is about to assist or participate in, these activities.

- ! What constitutes an "adverse action."

An "adverse action" is generally defined as an adverse change of the terms, conditions, or benefits of the employee's work. Adverse employment actions may include changes in employment status,

regardless of whether the individual's pay is affected, and threats to employment.

! What constitutes "retaliation" under the NRC's regulations.

An adverse action is deemed retaliatory if it is taken, in whole or in part, because the individual was engaged in a protected activity.

The scope of the training given should also include consequences for deviations from applicable laws, regulations and policies underlying SCWE expectations.

The training for should identify appropriate gateways for employees and contractors to identify concerns, i.e., manager, quality assurance, corrective action programs, appeal processes, alternative processes for raising concerns, if applicable (e.g., Employee Concerns Program/Ombudsman), NRC and DOL. The training should include a description of how the programs function, and the role for a manager within each program.

Expectations for management behavior should be included in the training. For example, managers should be expected to make themselves available to the workforce by various means, including an "open-door" policy in the office and when a manager is in the field. The expectations might include the need for the manager to be sensitive to an employee's potential reluctance to raising concerns and, therefore, the need to protect their identity or the identity of others involved. Basic listening skills, effective ways to seek input, and expressing appreciation to those who raise concerns, are other behaviors one might expect of managers. Management should be knowledgeable of and periodically use various media instruments to communicate their SCWE principles. Management should establish timeliness goals for responding to concerns, which consider safety significance, and provide periodic updates to the individual who identified a concern. A manager should evaluate the effectiveness of their responses to determine whether they adequately addressed the employee's concerns. Management should be sensitive to ensure operational or maintenance goals do not result in supervisors being less receptive to safety concerns, particularly those which may result in significant costs or schedule delays?

Finally, training for managers, in particular, should include information to help them identify and address signs of a "chilled environment," that is, one in which employees are afraid to raise safety concerns for fear of retaliation.

Managers who model positive traits of availability, receptiveness, sensitivity, encouraging communications, timeliness, and responsiveness associated with a SCWE will promote employee confidence in identifying and resolving concerns. Managers who have exhibited success in this area should consider training or mentoring other managers in an effort to duplicate the success.

Similarly, expectations for employee behavior, should also be included in their training. Consider emphasizing the following employee behaviors during training:

- ! Individual responsibility for reporting concerns;
- ! Clear communication of the concern and confirmation of understanding with the person receiving the concern;
- ! Willingness to share suggested solutions to concerns and participate or not in their resolution;
- ! Follow-up to ensure concern is adequately addressed, and;
- ! Need for every employee to demonstrate respect for others who identify concerns.

Initial training of recently hired employees or recently promoted managers should be conducted as soon as practicable and refresher training for existing staff, should be conducted annually or more frequently, as determined by the needs and complexity of the organization. Annual refresher training for employees and managers should review key points from initial training and include lessons learned, as appropriate, from successes and/or problem areas.

### **SCWE Incentive Programs**

An incentive program can be developed which provides recognition/rewards for individual/team efforts in identifying and/or resolving safety issues. In addition, implementation of site-wide bonus/incentive programs which reflect safety objectives over production goals may also encourage reporting of safety concerns. However, some care should be taken to ensure that incentive programs do not inadvertently discourage reporting concerns, e.g., some employees may not want recognition.

While it is important to hold employees accountable for personnel errors, licensee personnel management practices, to the extent practicable, should consider that actions against personnel who self report errors can, in some circumstances, discourage employees from raising concerns, near misses, etc. Consider discussing self-identification and prompt, effective corrective actions as mitigating circumstances for consideration in addressing personnel errors.

- B. Management is Promptly Notified of Concerns** - Aside from the practices discussed above concerning policies, training, and incentive programs designed to create a work environment where employees feel free to raise safety concerns without fear of retaliation, there are other behaviors and processes which may help employees promptly identify and notify management of concerns. Employees and management that demonstrate an open and questioning attitude by asking “why” and “what if” type questions help to ensure concerns are promptly identified. Processes for identifying concerns should be accessible and user-friendly. A

corrective action program which is flexible in its use of paper forms and/or terminals, conveniently placed throughout the facility, also helps ensure prompt notification of safety concerns. An accessible and approachable management team further motivates employees to report concerns including communications that ensure an understanding of the concerns prior to their proposed resolution and inspection. As appropriate, employees should be allowed and encouraged to spend needed work hours to report concerns.

- C. Concerns are Promptly Prioritized and Reviewed** - Safety should be a primary factor in the concern prioritization scheme and in determining the breadth and depth of the evaluation. Effective communication plans should ensure the sharing of information between affected departments so that the identified concern's potential impact on safety can be appropriately assessed. In addition, management and employees should develop expectations concerning timeliness to complete the evaluation and resolution of issues. The process for screening issues should include a review for operability and reportability as applicable. For significant conditions adverse to quality, the evaluation should be sufficient to identify the root and contributing causes of the issue. In addition, the root cause analysis should address both the extent of the condition and the cause of the issue.
- D. Concerns are Appropriately Resolved** - Timeliness of the corrective actions should be commensurate with the safety significance of the issue. Processes should be in place to ensure that appropriate actions are taken in response to all conditions adverse to quality. For significant conditions adverse to quality, corrective actions should be taken to address the root causes, contributing causes, and the extent of the condition caused by the identified concern.
- E. Feedback is Provided to the Concerned Individual** - Feedback should be provided at appropriate points during the concern resolution process. Upon receipt of the concern, the individual receiving the information may need to discuss the concern with the employee raising the concern to ensure understanding of issue and its safety significance. Additional feedback may be necessary during the evaluation when it is apparent that resolution may take longer than anticipated. Follow-up with the concerned individual when the evaluation is complete is important to share proposed actions to address the issue, if appropriate. The feedback process which is sufficiently flexible to permit a concerned individual who wants anonymity to obtain feedback, can be most effective.
- F. Appeal Process for Concerns** - An appeal process which facilitates an additional review to ensure issues were thoroughly addressed (e.g., differing professional opinion or alternate dispute resolution processes) can provide added assurance that concerns are appropriately resolved.

**G. Self-Assessments of Problem Identification & Resolution (PI&R) Processes -**

It is a good practice to periodically evaluate the adequacy and timeliness of responses, as well as the satisfaction of the concerned individual with the response and process. In addition, a self-assessment should address whether employees feel free to raise issues using the various processes employed by the licensee and whether these processes are viewed as effective, and why or why not. An assessment should include an appraisal of the effectiveness of the root cause analyses for significant issues and the effectiveness of associated corrective actions. Management should have a plan to promptly review the findings of such self assessments and implement appropriate corrective actions.

**H. An Alternative Process to Line Management -** To address the situation where an individual may wish to raise a concern to someone other than their management or through the corrective action program, an alternative process, such as an Employee Concerns Program, can be useful. Given the nature of many of the issues one may wish to raise outside of line management, such a process should ensure identity protection and/or anonymity to the extent appropriate. Such an alternative process should be accessible through multiple inputs, e.g. walk-ins, hot lines, drop boxes, etc. In considering the physical location of the personnel operating the alternative process, one should consider both its accessibility to the workforce as well as its visibility. An overly visible office may not allow for discreet visits. Personnel training programs, advertising posters, and facility news articles help provide notification of the process. Like concerns brought to the corrective action program, concerns brought to the alternative program must receive appropriate operability and reportability reviews and be properly prioritized utilizing safety as a primary factor for determining the breadth, depth, and timeliness of the evaluation. While independent from line organizations involved in the concerns, the process is most effective if directly accountable to senior management. Senior management provides appropriate support and resources including staffing and access to necessary documents and materials to conduct inspections. The process should provide timely feedback on the status and resolution of concerns, and status reports to senior management with analysis of program data and observations.

**Tools to Assess the SCWE**

Information gathered from the following tools should be considered for program enhancements, training enhancements, coaching and counseling opportunities, organizational changes, and survey topic suggestions.

**A. Lessons Learned -** Periodically evaluate information from pertinent organizations and processes which may contribute to or negatively affect the SCWE to identify enhancements or adjustments to the organizations and processes. The organizations and processes with pertinent information may include: the primary process for raising concerns (e.g., Correction Action Program), an alternative



process for raising concerns (e.g., Employee Concerns Program (ECP) or Ombudsman), Human Resources (regarding work environment concerns, etc.), legal counsel (regarding Department of Labor files, etc.) and/or Regulatory Affairs (regarding NRC findings or observations). Discussions about specific documentation or events should take into considerations privacy and attorney-client restrictions. Lessons learned from external organizations can also be useful.

- B. **Benchmarking** - Participation in applicable industry forums or peer-group assessments of other SCWE programs, where ideas and practices are exchanged and various SCWE elements compared, can also provided valuable insights.
- C. **Performance Indicators** - Parameters should be identified and monitored that help indicate the effectiveness of the SCWE training and problem identification and resolution processes. For example, the number and trend of NRC allegations compared to the number and trend of internally raised concerns may be an indication of employee willingness to raise concerns internally. Similarly, the percent of anonymous concerns raised may give insights into employee willingness to raise concerns without fear of retaliation.

An indication of licensee effectiveness in preventing retaliation claims may be indicated by the number and trend of NRC retaliation allegations compared to the number and trend of internally raised retaliation concerns.

Employees with a questioning attitude and a willingness and ability to raise safety concerns may be indicated by the comparison of risk significant concerns that are self-revealing, self-identified or externally identified by INPO, NRC, OSHA, etc.

Finally, the backlog and age of concerns may indicate a lack of effectiveness of processes for resolving concerns.

No single indicator is sufficient in identifying weaknesses in the SCWE, nor are there absolute measurements that indicate an unhealthy environment.

Nonetheless, monitoring the trends in various characteristics of the SCWE with performance indicators like those mentioned above and others provide some insights into the strengths and weaknesses of the SCWE at a site.

- D. **Survey and Interview Tools** - Survey instruments and interview questionnaires implemented by organizations independent of the groups being surveyed or interviewed, can be useful tools and complement other tools used to assess the SCWE.

Pre-survey or pre-interview communications are a very important part of such a tool. Communications with the workforce prior to the implementation of the survey or interview should include a request for participation, the need for input,

protection of participant's identity, the intended use of gathered information, and the intent to share results with the workforce.

Regular employee business hours should be made available to conduct surveys or interviews.

The scope of SCWE surveys should include the following:

- ! Awareness of company policies and practices with regard to raising safety concerns and avenues available for raising concerns;
- ! Management behaviors encouraging the workforce to raise safety concerns;
- ! Workforce willingness to raise safety concerns;
- ! Effectiveness of the processes available (normal and alternative) for raising concerns;
- ! Management's ability to detect and prevent retaliation for raising safety concerns.

Space should be provided on surveys for written comments.

Survey or interview follow-up action plans should be developed to address findings that are specific to work groups and generic to the facility. In addition, management commitments should be made to share the results and action plans to address findings with the workforce. The results of survey or interviews may indicate employee beliefs, attitudes and satisfaction with key SCWE attributes, as well as ways to improve the SCWE.

- E. **Direct Behavior Observations** - Direct observations of individuals' behavior provides information regarding the effectiveness of any SCWE training. Management behaviors observed may indicate a supervisor's receptiveness and support to employees for raising concerns, including how such action is rewarded, etc. While direct observation of employees in the work environment can provide valuable insights into the employee's questioning attitude and willingness to challenge perceived unsafe behavior.
- F. **Exit Interviews/Surveys** - Exit interviews and surveys, conducted to facilitate the identification of safety issues from exiting employees, provide an opportunity to capture concerns an individual may not have been comfortable raising while working at the facility. These activities should be conducted while ensuring identity protection and include follow-up mechanisms for exiting employees who want to be informed of the resolution of their concerns.
- G. **360-Degree Appraisals** - Consideration should be given to the implementation of a "360-degree" appraisal program where employees are asked to provide feedback on manager SCWE behavior.

## **Improving Licensee Contractor Awareness of SCWE Principles**

The Commission's long-standing policy has been and continues to be to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to licensee activities. Thus, licensees are responsible for ensuring that their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation. In considering whether enforcement action should be taken against licensees for contractor actions, the NRC considers, among other things, the reasonableness of the licensee's involvement and oversight of the contractor environment for raising concerns.

- A. Communicating Licensee SCWE Expectations to Contractors** - Licensee SCWE expectations of contractor responsibilities as they relate to creating and maintaining a SCWE should be communicated to contractors engaged in regulated activities. It should be the licensee's expectation that the contractors and their subcontractors are aware of applicable regulations. Furthermore, a licensee may want to communicate to its contractors and subcontractors that they expect them to demonstrate that either an effective program exists that a) prohibits discrimination of contractor employees for engaging in protected activity and b) fosters a SCWE, or adopt and comply with the licensee's SCWE program for their employees.
- B. Licensee Oversight of Contractor SCWE Activities** - Aside from communicating its SCWE-related expectations to their contractors, licensees may wish to oversee contractor SCWE-related activities. Such oversight may include:
- ! Reviewing contractor programs and processes to prohibit discrimination and foster a SCWE;
  - ! Assessing the contractor management's commitment to SCWE principles/policy through document review or behavioral observations;
  - ! Reviewing contractor training, both for content and effectiveness;
  - ! Monitoring the contractor's actions to address concerns, such as reviewing contractor investigations to determine the need to conduct independent licensee investigations; and,
  - ! Evaluating actions, if any, the contractor takes to mitigate a concern's potential impact on the SCWE.
- C. Licensee Management Involvement in Contractor Cases of Alleged Discrimination** - Given that the SCWE is most challenged when changes are made to the employment conditions of the workforce, it can be very beneficial to licensees to monitor such changes when proposed or executed by the contractor. Licensee oversight in this area might include evaluating contractor processes for making changes to employment conditions, such as Disciplinary Policies and/or Reduction-In-Force Plans, to ensure they are well-defined, defensible, and communicated to the workforce in advance of their implementation.

Furthermore, licensee management should evaluate contractor proposed changes to employment conditions to ensure the proposed changes follow defined processes and are non-retaliatory. The licensee can also assess whether the contractor has taken into consideration the potential impact their actions might have on the SCWE, and, if appropriate, actions to mitigate those impacts.

Finally, contractor changes to employment conditions that are alleged or perceived to be retaliatory should be reviewed to ensure the changes are not retaliatory or could adversely impact the SCWE.

- D. Contractor SCWE Training** - Contractor SCWE training can be provided by the contractor or licensee. As with the training given to licensee employees, the contractor training should cover the laws, regulations, and policies underlying the licensee's SCWE expectations; the licensee's governing SCWE policy; the avenues available to contractor staff to raise concerns; and the licensee's expectations for contractor management and employee behavior regarding raising safety concerns. The contractor training should also include an explanation of licensee contractual rights to oversee the contractor's safety conscious work environment. Training should be conducted during business hours.

### **Involvement of Senior Management in Employment Actions**

Management should ensure that programs and processes involving changes to employment conditions, such as Disciplinary Policies or Reductions-In-Force plans, are well-defined, defensible and communicated to the workforce prior to their implementation.

An effective way for senior licensee management to prevent retaliatory actions by their supervisory staff, is to review proposed employment actions before the actions are taken to determine whether any of the factors of retaliation are present. Employment actions above an oral reprimand should be considered for prior review.

The factors include:

- ! Protected Activity - Has the individual against which the action is being taken engaged in protected activity?;
- ! Adverse Action - Is an adverse employment action being proposed?;
- ! Licensee or contractor Knowledge of Protected Activity - Such knowledge can be attributed to other than the individual's direct supervisor;
- ! Relationship Between the Adverse Action and Protected Activity - Is there evidence that the adverse action is being taken, at least in part, because of the protected activity? Even if there are other legitimate, defensible business reasons to have taken the action, if one of the contributing causes of the action was protected, a violation of the NRC's regulations has occurred.

Senior management review of such employment actions should ensure programs or processes are being followed to ensure actions are well founded and non-retaliatory. In addition, the review should ensure that the proposed action comports with normal practice within the latitudes allowed by the defined process and is consistent with actions taken previously.

The review should assess whether the supervisor requesting the action exhibits any sign of unnecessary urgency. The employee's prior performance assessments and the proposed action should be consistent or inconsistencies should be justified and documented.

Finally, an assessment should be done to determine what, if any, effect the employment action may have on the SCWE. If management determines that the action, despite its legitimacy, could be perceived as retaliatory by the workforce, mitigating actions to minimize potential chilling effects on raising safety issues should be considered. Such mitigating actions may include: (1) the use of holding periods during which the proposed employment action is held in abeyance while further evaluations are completed; (2) communications to the workforce about the action being taken, with appropriate consideration of privacy rights; (3) reiteration of the SCWE policy; and (4) communications with the employee against whom the action is being taken to clearly explain the non-retaliatory basis for the action.

After an employment action is taken, management should initiate a review of the facts, and, if warranted, reconsider the action that was taken. If retaliation is alleged, the licensee should assure that the appropriate level of senior management is involved in successfully implementing mitigating actions planned to minimize a potential chilling effect for raising safety issues. .

## **Definitions**

**Adverse Action** - *Initiated by the employer that detrimentally affects the employee's terms, conditions or privileges of employment. These include but are not limited to termination, demotion, denial of a promotion, lower performance appraisal, transfer to a less desirable job, or denial of access.*

**Alternate Dispute Resolution (ADR)** - *Refers to a number of processes, such as mediation and facilitated dialogues, that can be used to assist parties in resolving disputes.*

**Corrective Action Program (CAP)** - *A formal, trackable system for employees to document issues which they believe warrant some remedial action. The issues are usually prioritized according to the relative safety significance.*

**Differing Professional Opinion (DPO)** - *A formal alternative process which provides an avenue of appeal for an employee to disagree with a position taken by management.*

**Employee Concerns Program (ECP)** - *An alternative process to line management and the CAP for employees to seek an impartial review of safety concerns. Many programs handle a variety of concerns and may act as a broker seeking resolution on behalf of the employee with other offices.*

**Hostile Work Environment** - *An intentional discriminatory work environment that is pervasive and regular and detrimentally affects the employee because of protected activity.*

**Memorandum of Understanding (MOU)** - *A written agreement which describes how organizations, offices or agencies will cooperate on matters of mutual interest and responsibility.*

**Performance Indicators (PI)** - *A series of pre-determined measured items which usually provide managers with insight into what may be occurring within an organization and give an early sign of problems that, if acted upon, could relieve stress within an organization.*

**Protected Activity** - *Includes initiating or testifying in an NRC or DOL proceeding regarding issues under the NRC's jurisdiction, documenting nuclear safety concerns, and the internal or external expression of nuclear safety concerns.*

**Safety Conscious Work Environment (SCWE)** - *An environment in which employees are encouraged to raise safety concerns both to their own management and to the NRC without fear of retaliation.*